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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/885,970	06/21/2001	Bruce A. Fogelson	7272-80216	5291

24628 7590 04/06/2011  
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EXAMINER
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TARAE, CATHERINE MICHELLE

ART UNIT	PAPER NUMBER
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3688

MAIL DATE	DELIVERY MODE
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04/06/2011

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/885,970	<b>Applicant(s)</b> FOGELSON, BRUCE A.	
	<b>Examiner</b> C. Michelle Tarae	<b>Art Unit</b> 3688	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 January 2011.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-58 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 29-38, 40-58 is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☒ Claim(s) 39 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on January 26, 2011 has been entered.

Claims 1, 28-29 and 50 have been amended. Claims 1-58 are now pending in this application.

### ***Response to Amendment***

2. The amendments to claims 1, 28-29 and 50 are acknowledged.

### ***Response to Arguments***

3. Applicant's arguments are moot in view of the withdrawal of the 35 USC 103 rejection.

### ***37 CFR 1.131 Affidavit***

4. The affidavit filed on January 26, 2011 under 37 CFR 1.131 is sufficient to overcome the Lomangino U.S. Pub. No. 2002/0052756 reference.

***Claim Objections***

5. Claim 39 is objected to because of the following informalities: Claim 39 is a method claim dependent on a system claim. Appropriate correction is required.

***Claim Rejections - 35 USC § 101***

6. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

7. Claims 1-28 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

8. Claims 1-28 are rejected under 35 U.S.C. 101 based on recent Supreme Court precedent and Federal Circuit decisions. The Office's guidance to examiners is that a § 101 process must (1) be tied to a particular machine or apparatus, or (2) particularly transform a particular article to a different state or thing (also referred to as the "machine-or-transformation test"). *Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Cochrane v. Deener*, 94 U.S. 780, 787-88 (1876); *In re Bilski*, 88 USPQ2d 1385 (Fed Cir. 2008); *Bilski v Kappos* (Aug 2010). Also see USPTO Memoranda, "Guidance for Examining Process Claims in view of *In re Bilski*," January 7, 2009 and "New Interim Patent Subject Matter Eligibility Examination Instructions," August 24, 2009. Both memoranda may be located on the USPTO website at:

<http://www.uspto.gov/web/patents/memoranda.htm>.

Additionally, there are two corollaries to the machine-or-transformation test. First, a mere field-of-use limitation is generally insufficient to render an otherwise ineligible method claim patentable. This means the machine or transformation must impose meaningful limits on the method claim's scope to pass the test. Second, insignificant extra-solution activity will not transform an unpatentable principle into a patentable process. This means reciting a specific machine or particular transformation of a specific article in an insignificant step, such as data gathering or outputting, is not sufficient to pass the test.

If neither prong of the machine-or-transformation test is met by the claim, the method is not a patent eligible process under 35 U.S.C. 101 and is non-statutory subject matter.

It is further noted that mere recitation of a machine in the preamble in a manner such that the machine fails to patentably limit the scope of the claim does not make the claim statutory under 35 USC 101, as seen in the Board of Patent Appeals Informative Opinion *Ex Parte Langemyr et al.* (Appeal 2008-1495).

In the instant case, Applicant's method steps fail the first prong since they are not tied to a particular machine and can be performed without the use of a particular machine or apparatus. For example, the broadest reasonable interpretation of claims 1 and 28 would be a method that could be performed by hand (e.g., a particular machine is not performing a step that is more than mere field of use or insignificant extra-solution activity). Further, the recitation of "computer-implemented" in the preamble does not patentably limit the scope of the claim as the body of the claim does not refer back to

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the preamble and the preamble is not needed to understand the body of the claim.

Similarly, Applicant's method steps fail the second prong because they do not result in a transformation of a particular article to a different state or thing. Thus, claims 1 and 28 are non-statutory.

Dependent claims 2-27 merely add further details of the method steps recited in claim 1 without including any tie to a particular machine or apparatus or any transformation of a particular article to a different state or thing in a step that is more than insignificant extra-solution activity or mere field-of-use. Therefore, dependent claims 2-27 are also non-statutory as they also fail both prongs of the machine-or-transformation test.

### ***Allowable Subject Matter***

9. Claims 29-38 and 40-58 are allowed.

### ***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- Helbling U.S. Pat. No. 5,546,303 discusses correlating charitable contributions;  
and
- Ziarno U.S. Pat. No. 5,663,547 discusses a method of fund raising.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Michelle Tarae whose telephone number is 571-272-6727. The examiner can normally be reached Monday – Friday from 8:30am to 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on 571-272-6812. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/C. Michelle Tarae/  
Primary Examiner, Art Unit 3688

April 5, 2011